IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

SECOND APPEAL NO.117 OF 2007

WITH

CIVIL APPLICATION NO.305 OF 2007

In

SECOND APPEAL NO.117 OF 2007

Shri Manohar Rambhau Kothekar : Appellant
(Orig.Plaintiff)

V/s.

Shri Laxman Atmaram Patil & Ors. : Respondents
(Orig.Defendants)

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Mr.P.S.Dani for the appellant.

Mr.Shreekant V. Gavand for the respondents.

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CORAM : S.A.BOBDE, J.

DATE : AUGUST 28, 2007.

P.C.

1. Admit.

Taken up for final hearing by consent.

2. After hearing the matter for sometime, the following order is passed by consent:-

O R D E R

(i) The judgement in appeal is hereby set aside. The matter is remanded back to the trial Court for a fresh decision, in accordance with law. In view of the judgement of the Supreme Court in Baba Kashinath Bhinge v. Samast Lingayat Gavali & Ors. (1994 Supp. (3) SCC 698), the trial Court shall consider the appellant-plaintiff's case that there was a relinquishment on the basis of the evidence that is already on record, in accordance with law.

(ii) The trial Court shall allow the respondents to amend the counter-claim so as to join the heirs of Rambhau and Motiram as parties to the suit and permit the parties to do all other consequential acts as may be necessary.

(iii) The Second Appeal stands disposed of in the above terms.

3. In view of the disposal of the Second Appeal, the Civil Application does not survive and the same stands disposed of.

S.A. BOBDE, J.